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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WINDSTREAM)	
KENTUCKY EAST, LLC AND)	
WINDSTREAM KENTUCKY WEST, LLC (1))	CASE NO. 2014-00283
FOR A DECLARATORY RULING THAT)	
APPROVAL IS NOT REQUIRED FOR THE)	
TRANSFER OF A PORTION OF THEIR)	
ASSETS; (2) ALTERNATIVELY FOR)	
APPROVAL OF THE TRANSFER OF ASSETS;)	
(3) FOR A DECLARATORY RULING THAT)	
COMMUNICATIONS SALES AND LEASING,)	
INC. IS NOT SUBJECT TO KRS 278.020(1);)	
AND (4) FOR ALL OTHER REQUIRED)	
APPROVALS AND RELIEF)	

**MEMORANDUM IN SUPPORT OF
CWA MOTION TO INTERVENE**

INTERVENTION

On August 7, 2014, Windstream ("Windstream") initiated this proceeding to seek Commission approval of the transfer of certain unspecified assets to Communications Sales and Leasing, Inc. ("CSL"). CSL would then be spun off to the shareholders of Windstream, creating a new, publicly traded company completely independent of Windstream.

According to the Application and public statements made about the transaction by Windstream, Windstream would lease back the assets that it sells to CSL for a period of 15 years, with options to extend the lease to a total of 35 years.

As consideration for the transfer of assets, CSL would assume (or pay off) certain debt obligations of Windstream.

CSL would be organized as a Real Estate Investment Trust ("REIT") which would provide the shareholders of CSL with certain tax advantages.

The Communications Workers of America ("CWA") represents approximately 250 employees of Windstream in Kentucky. Many of the employees represented by CWA also are customers of Windstream. This proposed transaction and the decisions of this Commission with respect thereto are likely to have a direct and immediate impact on the people CWA represents, both as employees and as customers of Windstream in Kentucky.

The interests of Windstream's employees will or may be adversely affected by this case. In particular, the proposed transaction would involve the transfer of nearly all of Windstream's field assets (real estate, wires, cables, poles, conduits, etc.) to an independent company and then the lease back of those same assets.

The proposed transaction raises serious concerns about continued safe access to these facilities. CWA would note that Windstream has not provided a copy of the actual lease agreement, but only a summary that, on its face, states that it is a "preliminary outline of the structure and certain key provisions" of the lease. Project Rite, Outline of Master Lease, July 28, 2014 (appended to Application as Ex. 4 and referred to herein as "Draft Lease Outline").

CWA has a substantial interest in this case, as discussed above. It is seriously concerned about the impact on its members of the proposed transaction. CWA and its members will or may be directly and seriously affected if the proposed transaction is approved.

CWA will limit the issues it raises to those that are squarely within the Commission's jurisdiction to consider. CWA will focus its attention on the financial and operational impacts of the proposed transaction. CWA will not seek to have the Commission address any labor relations issues or other matters that are outside the scope of the Commission's jurisdiction.

Granting CWA the ability to intervene will not unduly prolong or delay the proceeding. CWA is a frequent participant before state and federal regulatory commissions. CWA has access to experienced regulatory counsel and financial analysts who will be called upon, if necessary, to represent its interests in this case, and it will not engage in conduct that would unnecessarily delay this proceeding.

CWA will bring a unique perspective to this proceeding. CWA is monitoring and/or participating in parallel proceedings involving this same transaction in other jurisdictions. Thus, CWA may have access to information that might not otherwise be available to parties in Kentucky.

No other party represents the interests of CWA. The perspective of a utility's employees is fundamentally different than the interests of other parties. Utility employees are often the first people affected if a utility experiences financial difficulties. Utility employees are most directly – and potentially seriously – affected if the utility engages in unsafe and other unwise operational practices. In short, utility employees can provide a unique perspective on numerous issues that may be directly affected by the proposed transaction.

ADDITIONAL GROUNDS FOR INTERVENTION

Operational Concerns. Windstream proposes to transfer certain assets to a new company (CSL) that will not be regulated as a public utility. Specifically, Windstream states that it proposes to transfer the following assets to CSL: " all of the WIN Companies' distribution systems consisting of fiber optic cable, copper cable, conduits and conduit systems, poles, attachment hardware (bolts, lashing, etc.), guy wires, pedestals, concrete pads, central office land and buildings, signal repeaters, and amplifiers, together with all replacements, modifications, alterations, and additions, located in Kentucky." Application, p. 8. Footnote number 2 then

excepts from the transaction "any distribution facilities financed in partnership with the federal government through the American Recovery and Reinvestment Act." Id. The Application is silent as to how those excluded assets will be identified and segregated in Kentucky.

In contrast, however, the Draft Lease Outline includes much broader categories of property. Specifically, that document purports to include the following types of property: "central office land and buildings ... [and] all fiber optic cable lines, copper cable lines, conduits, telephone poles, attachment hardware (including bolts and lashing), guy wires, anchors, pedestals, concrete pads, amplifiers and such other fixtures and other items of property, including all components thereof (such as cross connect cabinets, Windstream outside plant mini-cabinet mounting post (WOMP), fiber distribution hubs, fiber access terminals and first entry fiber splice cases) ... [and] all Easements, Permits and Pole Agreements related to the Leased Property." Draft Lease Outline, p. 1, Ex. 4.

Of particular note, the Draft Lease Outline includes easements, permits, and pole agreements, where the Application is silent as to those categories of property.

Windstream also states that it will lease those same assets back from CSL. Yet, there is no mention of the ability of CSL, which will not be a public utility or otherwise certificated by this Commission, to occupy public rights of way, hold utility easements, occupy space on poles or in conduits, or otherwise provide access to such facilities so that CWA members may safely operate, maintain, repair, and replace those facilities.

To the extent that Windstream Companies propose to transfer utility easements, poles, conduits, copper and fiber placed on poles or in conduits, CWA questions whether Windstream has the legal right to transfer such assets to an entity that does not hold a certificate of public

convenience from this Commission. CWA further questions whether it is in the public interest to permit an uncertificated entity to own or control such assets.

CWA is concerned for the safety of its members in their ability to obtain unfettered and safe access to facilities located on easements or rights of way that are not held by a public utility, when the original purpose of the easement or right of way may have been limited to the provision of service by a public utility.

CWA also is concerned that Windstream may be attempting to transfer to a non-utility real estate interests that were acquired solely for public utility purposes. If such a transfer were to occur, CWA members who enter onto the property to operate, maintain, repair or replace facilities could be threatened with legal action, or otherwise prohibited from safely performing their duties, because the property was no longer owned by an entity with the legal status of a public utility.

Similarly, while the Application states that Windstream will retain all operational control of the assets, the Draft Lease Outline states: "Landlord may require Tenant ... to convey legal title to Landlord to any or all of the easements, permits and pole agreements provided that (i) Landlord has obtained all certificates, consents, approvals, licenses or permits necessary for Landlord to hold such legal title" Draft Lease Outline, p. 3, Ex. 4.

The Application also fails to mention what happens at the end of the lease term. The outline, however, indicates that Windstream will lose control of the assets when the lease ends. Specifically, that document states: "Upon expiration or termination of the Master Lease, Tenant shall transfer the Communications Assets to the Successor Tenant for fair market value." Draft Lease Outline, p. 7. That provision then continues by noting that the Communications Assets include not only the assets subject to the lease, but also "electronics and other equipment owned

by Tenant, ... any customer relationships ..., and, if requested by a Successor Tenant, all employees primarily dedicated to the maintenance, operation or support of the Affected Facility subject to existing collective bargaining agreements." Id.

Moreover, CWA would note that while the terms of the lease are critically important to ensuring the rights and property retained by Windstream, a complete copy of the lease has not been provided; and it is not even apparent that a final lease exists.

Financial Concerns. Windstream states that the proposed transaction will relieve it of \$3.2 billion in debt company-wide. Application, p. 22. No information is provided about the portion of this debt that is associated with Kentucky retail operations or the current cash flow requirements associated with the Kentucky portion of the debt.

The outline of the draft lease mentions (but the Application does not) that Windstream will incur an annual lease obligation estimated at \$650 million, escalating by 0.5% per year beginning in the fourth year. Draft Lease Outline, p. 2. No information is provided about the portion of that lease obligation that will be associated with Kentucky retail operations, or how that amount would compare to current cash flow requirements for debt service.

Thus, it is not at all apparent that the proposed transaction would have a positive effect on Windstream's cash flow in Kentucky. It appears to CWA that it is possible that the proposed transaction could have a negative effect on Windstream's cash flow in Kentucky, making it less likely that Windstream would have funds available to improve service to Kentucky consumers.

In particular, in most lease transactions, the lease payment provides the equivalent of a return on investment and depreciation on that investment to the Landlord, perhaps with some discounting for tax effects. Thus, CWA believes it is likely that Windstream's lease payments to CSL would effectively include cash payments roughly equivalent to depreciation and interest. In

contrast, in an ownership model, depreciation expense does not require a cash outlay; thereby providing a potential source of free cash flow for new capital investment. It is not at all apparent, therefore, that the proposed transaction would increase the cash flow available to Windstream to invest in its Kentucky operations.

Moreover, on September 12, 2014, Windstream submitted a letter to the Public Utilities Commission of Ohio, a copy of which is attached hereto as Exhibit A. That letter raises further financial concerns about the proposed transaction. As CWA understands the rather confusing letter, the sale and leaseback will not be treated as a lease for accounting purposes. It appears, therefore, that the Windstream companies would be required to take a write-off representing the discounted present value of the lease payments it would be making to CSL. There is no mention of the effect this would have on Windstream's shareholder's equity or its ability to raise capital in the future. CWA notes, however, that Windstream's total shareholders' equity as of December 31, 2013, was \$840.2 million.¹ Thus, it appears likely that a write-off of the value of future lease payments could result in a significant reduction (or even complete elimination) of Windstream's shareholders' equity.

To the best of CWA's knowledge, Windstream has not provided this information to this Commission and has not mentioned the effect this would have on Windstream's Kentucky operations.

Moreover, the letter leaves unanswered questions about the tax effect of the transaction. The letter states that CSL will be able to take depreciation on the assets for tax purposes; but it does not mention whether Windstream will be able to deduct the lease payments for tax purposes. If the lease payments are not deductible, then the transaction could result in a

¹ 2013 Annual Report of Windstream Holdings, Inc., available at: < <http://investor.windstream.com/investors/annuals-proxies.cfm> >.

significant increase in Windstream's tax expense (since it would lose depreciation and interest expense), which could severely affect its cash flow.

Once again, Windstream's filings with this Commission leave many unanswered questions, and those questions are critical to a full understanding of the operational and financial impacts of the proposed transaction on the Kentucky utilities (and their customers and employees).

Finally, Windstream also claims that the transaction would enable it to “expand their broadband network and deliver enhanced services” (Application p. 21); “allow the Operating Companies to increase their targeted Capital expenditures” (Application p. 20); and “invest in new services and new uses for the wireless network...” (Application p. 24). No information is provided, however, about whether any such investment will be made in Kentucky. If all other issues are resolved, such that the Commission can conclude that the transaction would be beneficial to Windstream in Kentucky, and “consistent with the public interest” pursuant to KRS 278.020(6), the Commission should include a binding commitment for specific, additional capital investments in Kentucky to benefit Windstream's retail customers.

Respectfully submitted,

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By

A handwritten signature in black ink, appearing to read "Don Meade", is written over a horizontal line. The signature is stylized and cursive.

Don Meade

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Intervene was served upon the parties of record listed below this 23rd day of October, 2014, via U.S. mail, postage prepaid.

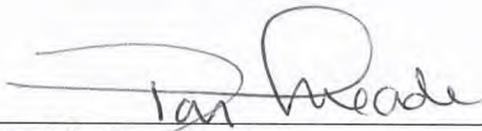
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September 12, 2014

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PUCO

Barcy McNeal, Secretary
Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street, 11th Floor
Columbus, OH 43215-3793

Re: *In the Matter of the Application of Windstream Holdings, Inc. et al. to Transfer,*
PUCO Case No. 14-1438-TP-ATR

Dear Ms. McNeal:

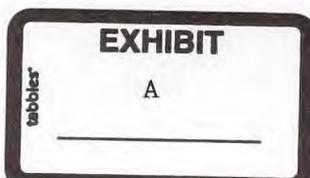
This letter supplements the information contained in the application filed in this case on August 19, 2014.

In accordance with generally accepted accounting principles in the United States ("GAAP"), the spin-off-leaseback should be accounted for in accordance with the provisions for sale-leaseback transactions involving real estate. As a result of Windstream Holdings, Inc.'s ("Holdings") operating companies continued involvement in the telecommunications distribution system assets, due in part to retaining all applicable regulatory obligations, including pole attachment obligations, the spin-off-leaseback does not qualify for sale-leaseback accounting under GAAP, which means it will not be treated as either a capital or operating lease.

Under this accounting treatment, Holdings' operating companies remain the accounting owner of the assets. Accordingly, the assets subject to the spin-off-leaseback will remain on the balance sheet of Holdings' operating companies and will continue to be depreciated as they are currently and there will be no changes to any of the operating companies' accounts, including pole attachments, except for the recognition of a long-term lease obligation equal to the operating companies' proportionate share of the required future minimum lease payments due to the REIT on a discounted basis, with a corresponding reduction in the operating companies' equity accounts. Other than the aforementioned changes, the annual reports filed with the PUCO by Holdings' ILEC affiliates will not change as a result of the transaction and will continue to be filed as they are today.

As mentioned above, the assets will remain on the balance sheet of Holdings as accounting owner and also will appear on the REIT's books as legal owner. Both companies will depreciate the assets, but only the REIT will include depreciation expense as a tax deduction

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ATTORNEYS AT LAW

Barcy McNeal, Secretary
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in its tax returns. Holdings and its operating companies would no longer include depreciation expense as an income tax deduction in their returns.

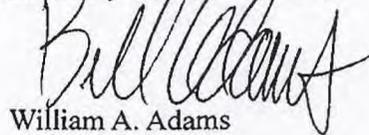
Additionally, capital improvements made to existing plant, whether such capital improvements are funded by Holdings or the REIT, will continue to be owned by the REIT. Capital additions, e.g., new plant to serve new subdivisions, will be owned by Holdings' operating companies.

Please advise if you have any questions about this.

Thank you for your assistance.

Very truly yours,

BAILEY CAVALIERI LLC



William A. Adams

WAA/jlp